

ORIGINAL

③ PENDING
06/18/08 PM 1:51
NORTHERN DISTRICT OF CALIFORNIA
FEDERAL DISTRICT COURT
SAN FRANCISCO, CALIFORNIA

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODYName Boyd Mobassa B
(Last) (First) (Initial)Prisoner Number P-05952Institutional Address Folsom State Prison; P.O. Box 950
Folsom, California 95763UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAIN RE: Mobassa Boyd

(Enter the full name of plaintiff in this action.)

CV

08

3005

Case No. _____

(To be provided by the clerk of court)

PETITION FOR A WRIT
OF HABEAS CORPUS

RMW

Matthew Kramer, Warden

(Enter the full name of respondent(s) or jailor in this action)

E-filing

PR

Read Comments Carefully Before Filing In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court, Oakland): Santa Rita County Jail
 14 Board of Parole Hearings Dublin, California 94568

| | | |
|----|---|--|
| 15 | Court | Location |
| 16 | (b) Case number, if known | |
| 17 | (c) Date and terms of sentence | <u>10-23-2007</u> |
| 18 | (d) Are you now in custody serving this term? (Custody means being in jail, on 19 parole or probation, etc.) | Yes <input checked="" type="checkbox"/> No _____ |

20 Where?

21 Name of Institution: Folsom State Prison; P.O. Box 950
 22 Address: Folsom, California 95763

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 915, 992, 999.

1 petition? Yes No _____

2 (c) Was there an opinion? Yes _____ No

3 (d) Did you seek permission to file a late appeal under Rule 31(a)? N/A

4 _____ Yes _____ No _____

5 If you did, give the name of the court and the result: N/A

6
7
8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes _____ No

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: N/A

19 Type of Proceeding: N/A

20 Grounds raised (Be brief but specific):

21 a. _____ N/A

22 b. _____

23 c. _____

24 d. _____

25 Result: _____ Date of Result: _____

26 II. Name of Court: _____

27 Type of Proceeding: _____

28 Grounds raised (Be brief but specific):

1 a. _____
2 b. _____
3 c. _____
4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____ *N/A*

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific): _____

9 a. _____

10 b. _____

11 c. _____

12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____ *N/A*

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific): _____

17 a. _____

18 b. _____

19 c. _____ *N/A*

20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No *V*

24 Name and location of court: _____ *N/A*

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

Claim One: My right to Present my witness.
Namely, my grand mother was violated by my Attorney In that, I'D asked Said Esq.- Attorney to interview and personally subpoena said witness. Secondly my right to Postpone my hearing was violated thus, my defense was never presented.

Supporting Cases: Duty to Investigate It is ineffective assistance of counsel to fail to adequately Investigate the case. Defense counsel must explore potentially meritorious defenses. Even if the evidence is not later introduced for tactical reasons.

(In re cordero, 46 Cal. 3d 161, 181, 249 Cal. Rptr. 342, 756 P.2d 1370 (1988).

Supporting cases

Civ. cd. § 3532. I die acts. "THE LAW NEITHER DOES NOR REQUIRE IDLE ACTS.";

MILTON V. MORRIS (Cite as:

767 F. 2d 1443 [4] Crim. Law 110 [6] 641, 12 (1)
THE STATE MAY NOT UNREASONABLY HINDER A DEFENDANT'S EFFORT'S TO PREPARE HIS OWN DEFENSE.

Supporting Facts: Albeit, the entire pre Hearing
too, and including Revocation Hearing was
nothing short of an complete Shame and
a farce See/ Exhibit A.) for Details.

Also, See/ Exhibit Regarding Germane,
and material indicia. I also Request that
this Court Shall Order that the Relevant
Tape Recording of the herein entailed
Proceedings (i.e., my Revocation Hearing.) Be
made available to me

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: See next Page 6(A) and 6(B)

6 _____
7 Supporting Facts: See next Page 6(A) and 6(B)
8 _____
9 _____
10 _____

11 Claim Two: N/A
12 _____
13 Supporting Facts: _____
14 _____
15 _____
16 _____

17 Claim Three: N/A
18 _____
19 Supporting Facts: _____
20 _____
21 _____
22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:
25 _____
26 _____
27 _____
28 _____

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 (In re cordero, 46 Cal. 3d 161, 181, 249 Cal. Rptr. 342, 756 P.2d
5 1370 (1988). Milton v. Morris, 767 F.2d 1443.

6 _____
7 Do you have an attorney for this petition?

Mr. Mark D. Eibert
Attorney at Law

Yes No

8 If you do, give the name and address of your attorney. Post office box 1126
9 I shall request Mr. Mark D. Eibert, entailed in Exhibit B.) to deal with this Half Moon Bay, CA 94019-1126

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12 _____
13 Executed on 6-17-2008

Mark D. Eibert

14 Date

Signature of Petitioner

15 _____
16 _____
17 _____
18 _____
19 _____
20 (Rev. 6/02)
21 _____
22 _____
23 _____
24 _____
25 _____
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 9

Date: November 27, 2007 Hon. LARRY GOODMAN, Judge

Fil R. Cruz, Dep.Clk.
Not Reported, Reporter

IN RE: MOBASSA K. BOYD
Petitioner

Counsel appearing: No Appearance
for Petitioner

vs.

Counsel appearing: No Appearance
for Respondent

PEOPLE OF THE STATE OF CALIFORNIA

Respondent

Nature of Proceedings: EX PARTE PETITION FOR WRIT OF HABEAS CORPUS

Case No: 132404
PFN: AYB907
CEN: 8215334

This Court having reviewed the Petition for Writ of Habeas Corpus filed on November 27, 2007 by Petitioner Mobassa K. Boyd, NOW HEREBY ORDERS:

Petition for writ of habeas corpus is denied. The petition fails to state a prima facie case to entitle petitioner to habeas relief.

CLERK'S CERTIFICATE OF MAILING (CCP 1013a)

I certify that the following is true and correct: I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1225 Fallon Street, Oakland, California. I served this ORDER REGARDING EX PARTE PETITION FOR WRIT OF HABEAS CORPUS, by placing a copy in an envelope addressed as shown below and then by sealing and placing it for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Oakland, California, following standard court practices.

Mobassa K. Boyd
PFN # -AYB907
5325 Broder Blvd.
Dublin, CA 94568

Date: November 28, 2007

Executive Officer/Clerk of the Court

By: _____
Fil R. Cruz, Deputy Clerk

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

In re MOBASSA BOYD on Habeas Corpus.

A120067

Alameda County Sup. Ct. No. 132404

BY THE COURT:*

The petition for writ of habeas corpus is denied.

FILED
DEC 21 2007
Court of Appeal - 1st App. Dist.
DIANA HERBERT
By _____ DEPUTY

Date DEC 21 2007

JONES, P.J. _____ P.J.

* Before Jones, P.J., Simons, J. and Needham, J.

S159993

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re MOBASSA BOYD on Habeas Corpus

The petition for writ of habeas corpus is denied.

**SUPREME COURT
FILED**

APR - 9 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

Name Mr. Mobassa BoydAddress Deuel Vocational Institution Prison SUPREME COURT
P.O. Box 600 FILEDTracy, California 95378-0600

JAN 16 2008

CDC or ID Number PO5952

Frederick K. Ohinch Clerk

Supreme Court of
California

(Court)

Deputy

Mr. Mobassa Boyd

Petitioner

vs.

State of California

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

S159993

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Page 1 of 6

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 9

Date: November 27, 2007 Hon. LARRY GOODMAN, Judge

Fil R. Cruz, Dep.Clk.
Not Reported, Reporter

IN RE: MOBASSA K. BOYD
Petitioner

Counsel appearing: No Appearance
for Petitioner

vs.

Counsel appearing: No Appearance
for Respondent

PEOPLE OF THE STATE OF CALIFORNIA

Respondent

Nature of Proceedings: EX PARTE PETITION FOR WRIT OF HABEAS CORPUS

Case No: 132404
PFN: AYB907
CEN: 8215334

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Mobassa K. Boyd
PFN # -AYB907
5325 Broder Blvd.
Dublin, CA 94568

Date: November 28, 2007

Executive Officer/Clerk of the Court

By: _____
Fil R. Cruz, Deputy Clerk

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

In re MOBASSA BOYD on Habeas Corpus.

A120067

Alameda County Sup. Ct. No. 132404

BY THE COURT:*

The petition for writ of habeas corpus is denied.

FILED

DEC 21 2007

COURT OF APPEAL - FIRST APP. DIS^T
By DIANA HERBERT

DEPUTY

Date DEC 21 2007

JONES, P.J.

P.J.

* Before Jones, P.J., Simons, J. and Needham, J.

This petition concerns:

A conviction Parole
 A sentence Credits
 Jail or prison conditions Prison discipline
 Other (specify): _____

1. Your name: Mr. Nobassa Boyd2. Where are you incarcerated? Level Vocational Institution Prison3. Why are you in custody? Criminal Conviction Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

X Felon in the Possession of an fire - Arm.b. Penal or other code sections: 12021(e)c. Name and location of sentencing or committing court: Alameda CountySuperior Court.d. Case number: 132404

e. Date convicted or committed: _____

f. Date sentenced: 6-30-98g. Length of sentence: Six yearsh. When do you expect to be released? Eight monthsi. Were you represented by counsel in the trial court? Yes. No. If yes, state the attorney's name and address:Can not now Recall . . .

4. What was the LAST plea you entered? (check one)

 Not guilty Guilty Nolo Contendere Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

 Jury Judge without a jury Submitted on transcript Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

My Right to Present my witness. Namely, my Grand mother was violated by my Attorney. In that, I'd asked

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction; describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Albeit, the entire Pre Hearing too, and including Revocation Hearing was nothing Short of an complete Shame and a farce See/Exhibit A.) for Details.

Also, See/Exhibit C.) Regarding Germane, and material indicia. I also Request that this court Shall Order that

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Civ. C.d.s 3532. I die acts. THE LAW NEITHER DOES NOR REQUIRES IDLE ACTS. ;
MILTON V. MORRIS (cite as:
767 F.2d 1443 [4] Crim. Law 110 641. 12(1)

1 Grounds Cont.: Hearing was
2 violated. thus, my defense
3 was never presented.

4

5 b. Sup. Cases: Duty to Investigate:
6 It is ineffective assistance of Counsel
7 to fail to adequately Investigate
8 the case. Defense counsel must
9 explore potentially meritorious
10 defenses. Even if the evidence

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1 b. Sup. Cases:

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3 IS NOT LATER INTRODUCED FOR TACTICAL
4 REASONS. (In re Cordero, 46 Cal. 3d 161, 181,
5 249 Cal. Rptr. 342, 756 P. 2d 1370 (1988).

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1 PRAYER
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3 That this Court Order for me,
4 too be Granted an Fair Hearing
5 and that this Court Order
6 that I, be promptly given an
7 Complete COPY of the tape
8 Recording of Said Hearing.
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7. Ground 2 or Ground _____ (if applicable):

MC-275

Said Esq.= Attorney, too interview and Personally Subpoena Said witness. Secondly my Right to Postpone my.

a. Supporting facts:

The Relevant tape Recording of the herein entailed proceedings (i.e., my Revocation Hearing) Be made avaible to me.

b. Supporting cases, rules, or other authority:

THE STATE MAY NOT UNREASONABLY HINDER A DEFENDANT'S EFFORT'S TO PREPARE HIS OWN DEFENSE.

8. Did you appeal from the conviction, sentence, or commitment? Yes. No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

SEE / Exhibit B.)

b. Result _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? Yes. No. If yes, state the attorney's name and address, if known:

Can not Recall

9. Did you seek review in the California Supreme Court? Yes No. If yes, give the following information:

a. Result SEE / Exhibit B.) b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

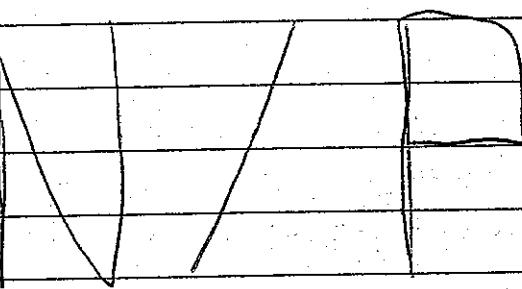
(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

I was not on Parole at said time.

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:



b. Did you seek the highest level of administrative review available? Yes. No.
Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes. If yes, continue with number 13. No. If no, skip to number 15.

13. a. (1) Name of court: SEE / Exhibit B.)

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

SEE / Exhibit B.)

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

N/A

16. Are you presently represented by counsel? Yes. No. If yes, state the attorney's name and address, if known:

I shall Request Esq., entailed in
Exhibit B.) to Deal With this.

17. Do you have any petition, appeal, or other matter pending in any court? Yes. No. If yes, explain:

SEE / Exhibit B.)

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

N/A

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 1-9-2008

Mohissa Baud
(SIGNATURE OF PETITIONER)

Exhibit A.)

Question TO Grand Mother

1 Have i ever abused or disrespect you.?

2

3 Have i ever stole from you.?

4

5 Do i get mad at you if i ask you
6 for money and you don't have it
7 to give me.?

8

9 When i visit your home do i come
10 over disrespecting and threatening
11 you of my Dad.?

12

13 Does my Dad drink and when he
14 does do he get angry fast.?

15

16 Does my Dad get a attitude when
17 he starts drinking how much do
18 he drink a day.?

19

20 Have you ever heard me disrespect
21 my dad before.?

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Question TO Dad

1 Was you drinking the day you
2 Said i threaten you.?

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4 Why do you always threaten me
5 by saying I'll call your parole
6 officer on you.?

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8 Have you had anything to
9 drink today.?

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Exhibit B.)

Boyd v. Newland
C.A.9 (Cal.), 2006.

United States Court of Appeals, Ninth Circuit.
Mabassa BOYD, Petitioner-Appellant,
v.
Anthony C. NEWLAND, Warden,
No. 05-17028.

Argued and Submitted Oct. 4, 2004.
Filed Dec. 29, 2004.
Amended June 26, 2006.

Background: State prisoner filed petition for writ of habeas corpus, challenging conviction of unlawfully possessing a firearm, after having previously suffered a juvenile adjudication for a felony, and unlawfully possessing a sawed-off shotgun. The United States District Court for the Northern District of California, Ronald M. Whyte, J., denied petition, and petitioner appealed.

Opinion, 393 F.3d 1008, amended.
*899 Mark E. Elbert, Half Moon Bay, CA, for the petitioner-appellant.
Glenn R. Pruden, Deputy Attorney General, State of California, San Francisco, CA, for the respondent-appellee.

Appeal from the United States District Court for the Northern District of California, Ronald M. Whyte, D.C. Judge, Presiding.
CV-00-21287-RMW.

Before: RICHARD D. CUDAHY,* SUSAN P. GRABER, and RAYMOND C. FISHER, Circuit Judges.

FN* The Honorable Richard D. Cudahy, Senior Judge, United States Court of Appeals for the Seventh Circuit, sitting by designation.

ORDER AND AMENDED OPINION

Holdings: The Court of Appeals, Graber, Circuit Judge, held that:

(1) without entire voir dire transcript, California appellate courts could not have evaluated relevant circumstances surrounding peremptory strike of African-American juror, as required by *Benson*, but (2) state court's use of petitioner's nonjury juvenile adjudication to increase his sentence from three to six years was not contrary to, or unreasonable application of, clearly established federal law.

Affirmed in part, and reversed and remanded in part with instructions.

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

The petition for rehearing and petition for rehearing en banc are DENIED. Further petitions for rehearing or petitions for rehearing en banc may be filed.

OPINION

The California courts denied a *Benson*^{FN1} motion made by petitioner Mabassa Boyd and denied his request for a free transcript of the entire voir dire for use on appeal. We must ask whether those rulings were contrary to, or unreasonably applied, clearly established Federal law as determined by the Supreme Court. In an earlier decision in this case, we answered "no" to *Boyd v. Newland*, 393 F.3d 1008 (9th Cir.2004). In response to a petition for rehearing and in light of recent Supreme Court cases clarifying *Benson v. Kennedy*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), we conclude that our earlier analysis was flawed. We now hold that the California appellate courts violated clearly established federal law by denying petitioner's habeas petition because, without an entire voir dire transcript, those courts could not evaluate the relevant circumstances surrounding the contested strike, as *Benson* requires. In that respect we reverse and remand with instructions to grant the petition for a writ of habeas corpus.

FN1. *Benson v. Kennedy*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

Petitioner also argues that the California courts erred by enhancing his sentence because of a nonjury juvenile adjudication. As in our earlier decision, we disagree and, in this respect, affirm.

FACTUAL AND PROCEDURAL HISTORY

Petitioner Mabassa Boyd is African-American. He was charged in California with unlawfully possessing a firearm after having previously suffered a juvenile adjudication for a felony, Cal.Penal Code § 12021(e), and with unlawfully possessing a sawed-off shotgun, id. § 12020(b)(1). During voir dire, the prosecutor used a peremptory

strike to excuse an African-American prospective juror. Petitioner's counsel made a *Benson* motion, asserting that the strike was race-based.^{FN2} At the time of the disputed peremptory challenge, another African-American potential juror had been stricken for cause; two other African-Americans remained as potential jurors, and the prosecution had used two other peremptory challenges. On non-African-American jurors. The trial court denied the motion, finding that "Petitioner's" showing fits short of showing a prima facie case of racial bias in the prosecutor's use of the peremptory challenge.

FN2. Petitioner's counsel challenged the peremptory strike under *People v. Wheeler*, 22 Cal.3d 238, 148 Cal.Rptr. 890, 583 P.2d 748 (1978). *Wheeler* prohibits, under the California Constitution, the use of racially motivated peremptory challenges. *Id.* at 761-62. A *Wheeler* motion serves as an implicit objection under *Benson*. *People v. Yerom*, 31 Cal.4th 93, 2 Cal.4th 3186, 72 P.3d 1167-88 (2003), so Petitioner preserved his federal constitutional claim. Accordingly, we refer to counsel's objection as a *Benson* motion.

The jury that eventually was empaneled convicted Petitioner. Petitioner waived his right to have a jury determine the truth of his prior juvenile adjudication. The trial court found the juvenile adjudication to be true and, accordingly, increased Petitioner's sentence from three to six years. Cal.Penal Code §§ 657(d)(3), 1170.12(b)(3).

Petitioner filed three requests to supplement the record to include the entire voir dire transcript. The California Court of Appeal granted Petitioner's requests in *901 part and required that he be provided the voir dire of the excused African-American juror plus his counsel's argument under *Benson*. But the court of appeal denied Petitioner's requests for the entire voir dire transcript because it concluded that he did not comply with a California local rule that requires a defendant to "establish with some certainty how the

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(Cite as: 455 F.3d 897)

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certainly that the challenge was more likely than not the product of purposeful discrimination. Instead, a defendant satisfies the requirements of *Bostock* by first step by producing evidence sufficient to permit the trial judge to draw an inference that a defendant is liable for discrimination if the plaintiff can establish the basis for all the facts, some or which are impossible for the defendant to know.

Id. at 2417.

same thing also decided

took effect after their convictions became final. *Jan. 19, 2000, S.C., 100, F.S. 100, F.S.* Because the government argues that Petitioner is requesting that the benefit of a rule decided after his original appeal was decided, and thus after his conviction became final, we must "post" address *Terrell* before turning to the merits of his claim. *Casperi v. Bohlen*, 510 U.S. 383, 389, 114 S.C., 104, 127 Ed.2d 236 (1994). We are convinced that *Johnson* and *Miller-El II* merely clarify *Baston* and do not establish new rules of criminal procedure.

persuaded that the opinion's support of comparative juror analysis on appeal did not create a new rule, because the Supreme Court applied the rule to Miller-El himself. The *Teague* rule applies to the Supreme Court as well as to lower courts. *See, e.g.* *Souther v. Smith*, 497 U.S. 227, 239, 110 S.Ct. 2822, 111 L.Ed.2d 193 (1990) (affirming the lower court's

In this case, it is clear that the Petitioner raised at least a plausible *Brown* claim and that contextual analysis is therefore appropriate. After the prosecutor used a peremptory challenge to strike an African-American juror (Petitioner is of the same race), Petitioner's counsel objected, arguing that this was the second African-American juror removed from the jury pool (the first having been removed for cause), there remained only two potential jurors.

Muller-El v. Hall, 391 U.S. 111, Miller-El, 111, comparative juror analysis at the appellate level to determine whether the prosecution had been motivated by racial bias in exercising peremptory strikes. 125 S.C.T. at 2723-38. "Comparative juror analysis," in this context, refers to an examination of a prosecutor's questions to prospective jurors and the jurors' responses to see whether the prosecutor treated otherwise similar jurors differently because of their membership in a particular group. See, e.g., *Id* (engaging in comparative juror analysis); *Muller-El v. Hall*, 391

FBI. There was no majority opinion in *Teague*. However, the Court has treated Justice O'Connor's plurality opinion as embodying its holding. See, e.g., *Tybar v. Cain*, 533 U.S. 656, 655, 121 S.Ct. 2478, 159 L.Ed.2d 632 (2001).

Court's refusal to apply the holding of one of the Court's previous opinions to a defendant because the rule established in that case was new. Therefore, if the Supreme Court's endorsement of comparative juror analysis on appeal constituted a new procedural rule, the Court would not have applied that rule to *Miller-El*, whose case came before the Court on an appeal from a denial of his habeas corpus, *Miller-El v. Dreise*, 361 F.3d 845 (5th Cir.2004). Because the Court did engage in extensive comparative juror analysis, we can infer that *Miller-El* must only have clarified the extant *Benson* three-tier framework. See *Frazier v. Southwick*,

African-American jurors in the pool, and nothing in the stock jurors' voir dire responses intimidated legitimate basis for removal. These facts, though not alone sufficient to establish a prima facie case, suggest that Petitioner's *Benson* claim was at least plausible, and the court should consider context in order to determine whether Petitioner has raised an inference of discrimination. See *Johnson*, 125 S.Ct. at 2417.

comparative juror analysis to discern whether differing life experiences justified the use of a peremptory strike against an African-American juror in a case in which a prima facie showing had been made, cert. denied, ___ U.S. ___, 125 S.Ct. 2968, 121 L.Ed.2d 895 (2005). Miller-El made clear that comparative juror analysis is an important tool that courts should utilize in assessing Batson claims. "More powerful than these bare statistics [revealing that the prosecution struck 91% of black

Neither does *Adlert-EI II* create a new rule of (5th Cir.2006) (noting that *Johnson* is "an example of the Supreme Court's consistent interpretation of *Boumediene* to date", but not deciding the *Teague* issue) and the state does not contend that *Johnson* established a new rule, see *Casper*, 510 U.S. at 389, 114 S.Ct. 948 (noting that if the state does not argue that *Teague* applies, a court need not consider it).

Accordingly, we now turn to the merits of the petitioners' claim and remand for further proceedings, which it could not have done unduly. *Teague* (if we were creating a new rule).

S.C. 1712. But, for both of them, we are symmeid by the California courts' refusal to provide an entire verbatim transcript to Petitioners.

Both *Johnson* and *Miller-El II* were decided after Petitioner's conviction became final. Thus, Government has argued that even if *Miller-El II* requires or encourages comparative juror analysis on appeal, its rule cannot apply in the case at bar. Under *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1334 (1989), *Teague* held that state habeas corpus petitions cannot rely on new constitutional rules of criminal procedure that were struck and white panelists allowed to serve." 125 S.Ct. at 2235.

criminal procedure. Instead, it simply illustrates the means by which a petitioner can establish, once should be allowed to establish, a *Bacon* error. See *Murphy v. Dreistein*, 416 F.3d 427, 439 (2005) (stating that in *Miller-El*, the Court did not announce "any new elements or criteria for determining a *Bacon* claim" but merely applied *Bacon* in the circumstances of that particular case); cert. denied — U.S. —, 126 S.Ct. 1028, 165 L.Ed.2d 888 (2006). *Miller-El* fits within this *Bacon* framework, which provides that the prosecutor's questions and statements during *voir dire* examination and in exercising his challenges may support or refute an inference of discriminatory

the first *Bazron* step, whether racial bias motivated the prosecutor's decision to remove a potential juror, a court must consider the "totality of the relevant facts and " all relevant circumstances" surrounding the peremptory strike. *Bazron*, 476 U.S. at 91, 96, 100-01 S.Ct. 1712. Thus, when a defendant raises a plausible *Bazron* claim, a court must analyze the context in which the contested peremptory strike was made. See *Johnson*, 905 F.2d at 125 (S.Ct. 1991) (reversing the state court's denial of habeas corpus because all three of the African-American prospective jurors were struck and the state court judges found the circumstances suspicious). In our

prosecution, he [or she] engaged in a pattern of discriminatory strikes against more than one prospective juror because the Constitution forbids striking even a single prospective juror for discriminatory purposes." *United States v. Vasquez-Lopez*, 22 F.3d 900, 902 (9th Cir. 1994). Nonetheless, in some cases, courts have found it helpful to compare the number of minority prospective jurors struck to non-minority prospective jurors struck. See *Miller-El*, 125 S.Ct. at 2325 (noting that "[t]he numbers describing the prosecution's use of peremptories are remarkable."); *Hadie*, 202 F.3d at 1198 (reviewing

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utilize on appeal when assessing a defendant's plausible *Benson* claim, we also must conclude that all defendants, including those who are indigent, have a right to have access to the tools which would enable them to develop their plausible *Benson* claims through comparative juror analysis.

"[T]he State must provide an indigent defendant with a transcript of prior proceedings when that transcript is needed for an effective defense or appeal." *Britt v. North Carolina*, 404 U.S. 226, 227, 92 S.Ct. 431, 30 L.Ed.2d 400 (1971). The Supreme Court has held that indigent defendants must be provided with various portions of the trial transcript. See, e.g., *id.* at 228, 92 S.Ct. 431 (stating that, the transcript of a prior mistrial ordinarily can be assumed to be valuable to a defendant, although ultimately found to be an alternative to the transcript existed); *Williams v. Oklahoma City*, 395 U.S. 458, 458-59, 89 S.Ct. 1818, 23 L.Ed.2d 440 (1969) (per curiam) (finding constitutional error where the state provided no trial transcript to an indigent defendant on appeal); *Gardner v. California*, 393 U.S. 367, 370-71, 89 S.Ct. 580, 21 L.Ed.2d 601 (1969) (holding that the indigent defendant had to be provided with a transcript of an evidentiary hearing from his original trial, so that he could file a new habeas petition); *Long v. Dist. Court of Iowa*, 385 U.S. 192, 192-94, 87 S.Ct. 362, 17 L.Ed.2d 290 (1966) (per curiam) (holding that a court's failure to provide a defendant with any portion of a habeas transcript was error). We recognize that the Court has never explicitly held that an indigent defendant is entitled to an entire voir dire transcript as of right, but *Miller-El II* makes comparative juror analysis a centerpiece of the *Benson* analysis, and that analysis cannot be done in the absence of a voir dire transcript. Accordingly, the state courts' refusal to provide Petitioner with the whole voir dire transcript in the face of a plausible *Benson* claim, involved an unreasonable application of clearly established Supreme Court precedent.

In denying, in part, Petitioner's request for an entire voir dire transcript, the state courts relied on a California rule that requires an indigent defendant to establish with some certainty how the requested materials may be useful on appeal before it will

provide a transcript free of charge. FN6 Petitioner argues that the rule is unconstitutional because it places him in the untenable position of having to establish how the entire transcript would be helpful to him, without having access to the transcript to make such a showing.

FN6. In pertinent part, the rule provides:

A. motion to augment the reporter's transcript shall identify the portion of the record with specificity, including the reporter and date of hearing. It shall be established with some certainty how the requested materials may be useful on appeal. Requests for jury voir dire should specify the exact questioning by which counsel of which juror together with the reason, justifying the request.

Cal. Ct. App., First App. Dist. Local Rule 6(d).

We do not agree that local rule 6(d) violates the Constitution. The Supreme Court has upheld a federal statute that is similar to California's local rule 6(d). In *United States v. MacCollom*, 426 U.S. 317, 322-23, 95 S.Ct. 2086, 48 L.Ed.2d 666 (1976) (plurality opinion), the Court concluded that a statute requiring a judge to make a finding that a habeas petition is not frivolous and that a transcript is needed, before providing an indigent defendant with a trial transcript, does not violate the United States Constitution. In short, the California rule requiring an indigent defendant⁹⁹⁸ to show a specific need to obtain a complete voir dire transcript does not run counter to clearly established federal law.

Finally, Petitioner contends that the state court violated clearly established federal law by using a nonjury juvenile adjudication to increase his sentence from three to six years. In *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), the Supreme Court held that, "other than the fact of a *prior conviction*, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." (Emphasis added.) Petitioner argues that a juvenile adjudication does not qualify as a "conviction" under the *Apprendi* exception.

We have held that the *Apprendi* "prior conviction" exception encompasses only those proceedings that provide a defendant with the procedural safeguards of a jury trial and of proof beyond a reasonable doubt. *United States v. Tijer*, 266 F.3d 1187, 1194 (9th Cir.2001). Consequently, we do not recognize the *Apprendi* exception as "convictions" for juvenile adjudications as "convictions" on appeal.

In summary, under Supreme Court precedent, the burden for making a *prima facie* case is not based on such adjudications. *Id.* at 1194-95.

prospective jurors struck. See *Miller-El II*, 125 S.Ct. at 2233 (noting that “[t]he numbers describing the prosecution's use of peremptories are remarkable.”); *Wade*, 202 F.3d at 1198 (reviewing the statistical evidence of the number of African-American potential jurors struck compared to the racial makeup of the other potential jurors who were struck and of the pool at large, although noting that statistical disparities can be misleading).

We know only that the prosecutor used a peremptory strike to remove one African-American juror and that two other African-American prospective jurors remained in the pool at that time. Because the state courts did not furnish a complete voir dire transcript to Petitioner, who is indigent, we lack the additional data that would allow the kind of statistical analysis that both the Supreme Court and this court have performed in the past. Second, we could assess “all relevant circumstances.” *Benson*, 476 U.S. at 96, 106 S.Ct. 1712, surrounding the challenged peremptory strike by engaging in comparative juror analysis. To support his claim, Petitioner contends here, as did his trial counsel in the first instance, that no nonracial reason existed for the peremptory challenge. In order to assess Petitioner's claim, we must compare the prospective *1448 juror who was stricken with the other prospective jurors who were not.

In our first *Boyd* opinion, we held that *Benson* does not compel a court to conduct comparative juror analysis for the first time on appeal. *Boyd*, 393 F.3d at 1015. We looked to California cases that require a petitioner to preserve the issue at trial in order for a court to consider comparative juror analysis on appeal. See, e.g., *People v. Johnson*, 30 Cal.4th 1302, 1 Cal.Rptr.3d 1, 71 P.3d 270, 285 (2003) (noting that the court maintains its “longstanding practice” of refusing to engage in comparative juror analysis for the first time on appeal, *relying on other grounds*). *Johnson*, 545 U.S. 162, 125 S.Ct. 2410, 162 L.Ed.2d 129. But after *Miller-El II*, we recognize that our previous reading of *Benson* was too narrow and that *Benson* does not contemplate a comparative juror analysis on appeal. In *Miller-El II*, the prosecution used 10 of its

non-minority jurors, leaving only one African-American juror in the pool. 125 S.Ct. at 2233. After *Miller-El* was convicted, but while his appeal was pending, the Supreme Court decided *Benson*. *Id.* at 2346 (Thomas, J., dissenting). The state court of appeals remanded the case for a *Benson* hearing, where defense counsel presented some evidence about the jurors who were struck and the government was forced to explain its strikes. *Id.*

[10] The Supreme Court, though, looked beyond the evidence that *Miller-El* had presented to the trial court and conducted a comprehensive comparative juror analysis on appeal. *Id.* at 2325-38 & 2326 n.2. Accordingly, the California courts' view that comparative juror analysis can take place on appeal only when the trial court engaged in such analysis in the first instance has been called into question:

Defendant asks us to examine the responses of jurors other than Juror T. [the African-American juror struck] in determining whether the trial court erred in finding that defendant failed to establish a prima facie case of group bias. In earlier cases we explained that, although such an examination is appropriate at the trial court level when the issue is properly brought to that court's attention, such an examination on appeal is not appropriate.

Without engaging in comparative juror analysis, we are unable to review meaningfully whether the trial court's ruling at either step one or step three of *Benson* was unreasonable in light of the high court's decision in *Johnson*, in which the court did not comment upon whether comparative analysis should be undertaken for the first time on appeal, and another decision issued the same day, *Miller-El III*, in which the court employed comparative juror analysis in circumstances in which it was undisputed that a prima facie case had been made. Assuming without deciding that a comparative juror analysis should be undertaken under the circumstances presented [in which the trial court found that the defendant failed to make a prima facie case], we conclude [that] defendant's proffered analysis fails to establish [that] the defendant failed to make a prima facie case of group bias.

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In *Miller-El II*, the Supreme Court did not merely review the reasons that the prosecutor gave for peremptorily striking the African-American jurors; instead, it also considered the *voir dire* questions that the prosecutor had posed to the various jurors. 125 S.Ct. at 2325-38. The Court concluded that the prosecutor asked different questions of minority prospective jurors from those it asked of nonminority prospective jurors in order to elicit different responses, which could then justify a peremptory strike on purportedly nonracial grounds. *Id.* at 2337. In some circumstances, a court may have to review the questions that the prosecution asked of jurors at step one of the *Benson* analysis to determine whether a defendant has made a prima facie showing of unlawful discrimination. There is nothing that suggests that it is more difficult or less desirable to engage in such analysis at step one rather than step three of *Benson*. Cf. *United States v. Esparza-Gonzalez*, 422 F.3d 897, 904-05 (9th Cir.2005) (engaging, on direct review, in comparative juror analysis to hold that the defendant engaged in a prima facie case of intentional unlawful discrimination).

Further, both *Johnson* and *Miller-El II* suggest that courts should engage in a rigorous review of a prosecutor's use of peremptory strikes. If a trial court's conclusion 1130 that a defendant failed to make a prima facie case could insulate from review a prosecutor's use of peremptory strikes, the holdings of those Supreme Court opinions would be undermined.

[12] But we can engage in no comparative juror analysis here, because we do not know what

467 F.3d 1139

467 F.3d 1139, 75 USLW 3603, 06 Cal. Daily Op. Serv. 9940
(Cite as: 467 F.3d 1139)

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127 S.Ct. 2249
127 S.Ct. 2249, 167 L.Ed.2d 1089, 75 USLW 3603, 75 USLW 3607
(Cite as: 127 S.Ct. 2249, 127 S.Ct. 2249 (Mem))Cir. 2002) ("We therefore conclude that juvenile adjudications can rightly be characterized as "prior convictions" for *Apprendi* purposes, and that the district court did not err in increasing the defendant's sentence based on his prior juvenile adjudications."); *Note*, *Constitutional Adjudication of Juvenile Delinquency to Be a "Prior Conviction" for the Purposes of Sentence Enhancement in a Subsequent Criminal Proceeding*, 116 Harv. L. Rev. 705, 708 (2002) (comparing various circuits' approaches and suggesting that *Tighe*'s understanding of the jury trial right is more consistent with the implications of the Supreme Court's recent jury trial jurisprudence"). To date, the Supreme Court has not resolved the conflict.[13] Although we are not suggesting that *Tighe* was incorrectly decided, as some of these varying interpretations of *Apprendi* suggest, the opinion does not represent clearly established federal law as determined by the Supreme Court of the United States. 28 U.S.C. § 2254(d)(1). In general, Ninth Circuit precedent remains persuasive authority in determining what is clearly established federal law. See *Duhaine v. Ducharme*, 200 F.3d 597, 600-01 (9th Cir. 1999) (stating that Ninth Circuit case law may be used to help determine clearly established federal law). But, in the face of authority that is directly contrary to *Tighe*, and in the absence of explicit direction from the Supreme Court, we cannot hold that the California courts' use of Petitioner's juvenile adjudication as a sentencing enhancement was contrary to, or involved an unreasonable application of, Supreme Court precedent.

AFFIRMED in part; REVERSED AND REMANDED in part with instructions to enter a conditional writ of habeas corpus, ordering

Mohasse Boyd's release unless the State provides to him, without charge, a complete voir dire transcript within a reasonable period of time, after which he may renew his *Benson* claim in the district court.

C.A. 9 (Cal.), 2006.

Boyd v. Newland, 467 F.3d 1139, 75 USLW 3603, 06 Cal. Daily Op. Serv. 9940

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Newland v. Boyd
U.S. 2007Supreme Court of the United States
Anthony C. NEWLAND, Warden, petitioner,
v.
Mobsasa BOYD,
No. 06-1032.

May 14, 2007.

Case below, 467 F.3d 1139.

Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

U.S. 2007
Newland v. Boyd
127 S.Ct. 2249, 167 L.Ed.2d 1089, 75 USLW 3403,
75 USLW 3603, 75 USLW 3607

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~~EXH 882~~ C

SUMMARY OF REVOCATION HEARING AND DECISION

(BPH Rules, Chapter 6, Article 3)

Records Office Use Only

Projected Revocation Release Date

Revocation Release Date

Controlling Discharge Date

Discharge Review Date

PRELIMINARY INFORMATION

| | |
|--|---|
| Type of Hearing REVOCATION | Location of Hearing SANTA RITA COUNTY JAIL Parolee in custody at Time of Hearing: YES |
| Basis for Charges Parole Violation Report, Dated: 27-SEP-2007 Police Report Agency Dated: 07-SEP-2007 OAK PD 07-70249 | Optional Waiver NO Date Signed by Parolee: Date of BPH Action: Assessment: |

Legal Data

The crime for which the parolee was committed to prison occurred on or before 12-31-1978: NO

The crime for which the parolee was committed to prison occurred on or after 1-1-1979: YES

Date of arrest on current parole violation charge(s): 19-SEP-2007

Date hold was placed on current parole violation charge(s): 19-SEP-2007

ADA Special Needs: EOP

Present at Hearing Hearing Officer: D STAR

- Yes No Parolee (If Parolee absent, Why?)
- Yes No Attorney Name: LARSEN, SUSIE Waived
- Yes No Agent of Record or Substitute: TUCKER, WILLIAM Reason not present:
- Yes No Hearing Agent: Reason not present:
- Yes No Observers Name and Organization: DEPUTY STEWART, SECURITY
- Yes No Interpreter Assigned Language Name

Witnesses (continue on the last page if more than 8 witnesses)

| Present | Name | Notify | | Wit. Desig.* | | Testified | Excused | If absent, state specific reason. |
|---------|----------------|--------|-----------|--------------|------|-----------|---------|-----------------------------------|
| | | Meth.* | Date | Stat. | Req. | | | |
| X | LIMMIE BOYD | SP | 09-OCT-07 | V | S | X | | DNA |
| X | PHILLIP LARKIN | SP | 09-OCT-07 | V | S | X | | |
| X | LILLA DOWNS | SP | 09-OCT-07 | V | S | | | DNA |
| | | | | | | | | |

*NOTIFICATION METHOD

M = Memo PC = Personal Contact
 L = Letter SP = Subpoena
 PH = Phone TT = Teletype

**USE ABBREVIATION FOR WITNESS DESIGNATION

Status: A = Adverse
 F = Friendly
 V = Victim

Requested by: S = State
 P = Parolee

NAME
BOYD, MOBASSACDC NUMBER
P05952INST/REGION / AGENT
OAKLAND 2 / 2
TUCKER, WILLIAMHEARING DATE
23-OCT-2007

SUMMARY OF REVOCATION HEARING AND DECISION

Preliminary Information (cont.)

H. HEARING: Occurred

REASON:

Specify Witnesses/Documents needed for next hearing:

SUMMARY OF FINDINGS

ADMISSIONS/DENIALS AND FINDINGS

Charges

Plea

Findings

| Charge Number | Code Number | Charge Specified | Admit | Deny | No Plea | Good Cause | Dismiss | Postponed |
|---------------|-------------|-------------------------|-------|------|---------|------------|---------|-----------|
| 1. | 999 | ELDER ABUSE | | | X | | X | |
| 2. | 915 | THREATEN/HARASS ANOTHER | | | X | | | |
| 2A. | 992 | Criminal threats | | | | X | | |

Reason: More accurately reflects parolee's behavior

NAME
BOYD, MOBASSACDC NUMBER
P05952INST/REGION / AGENT
OAKLAND 2 / 2
TUCKER, WILLIAMHEARING DATE
23-OCT-2007

SUMMARY OF REVOCATION HEARING AND DECISION**REASON FOR DECISION****Basis for Conclusion:**

ADA: DEC HX OF 2001 EOP CLASSIFICATION AND CURRENTLY HAS POC CONDITION; PAROLEE REPORTS NEEDS PSYCH MEDS, NOT CURRENTLY RECEIVING AT JAIL HOWEVER FELT OK AND WISHED TO PROCEED; ASSIGNED ATTORNEY AS ACCOMMODATION FOR MENTAL HEALTH ISSUES.
NO PRELIMINARY ISSUES RAISED

CH 1 = DISMISSED ; INSUFFICIENT EVIDENCE OF ANY WILLFULLY CAUSING OF PHYSICAL OR MENTAL SUFFERING TO LILLA DOWNS; MS DOWNS DNA AS SHE IS 92 YRS OLD AND REPORTEDLY HAS DEMENTIA (PER SONS TESTIMONY); WITNESS LIMMIE BOYD TESTIFIED TO PAROLEE MANIPULATING THE GRANDMOTHER FOR MONEY HOWEVER THIS DOES NOT RISE TO LEVEL OF CAUSING ANY MENTAL SUFFERING AND MR. LIMMIE BOYD TESTIFIED TO THIS AS WELL.

CH 2 = GCF ON AMENDED CHARGE OF CRIMINAL THREATS BASED ON LIMMIE BOYD CREDIBLE TESTIMONY TODAY THAT WAS CONSISTANT WITH HIS EARLIER STATEMENTS TO A AGENT AND TO POLICE THAT PAROLEE WENT INTO A RAGE AT HIS HOUSE AFTER LIMMIE TOLD HIM HIS FINANCIAL SUPPORT WAS BEING REDUCED, LIMMIE ARMED HIMSELF IN SELF DEFENSE, ASKED PAROLEE TO LEAVE, THREATENED TO CALL POLICE, PAROLEE PICKED UP A PORTA POTTIE, YELLED HE WAS GOING TO KILL FATHER AND THREATENED SAME AS HE LEFT THE RESIDENCE; WITNESS LARKIN TESTIFIED TO NOT BEING PRESENT ON THIS DATE BUT WITNESSING A PRIOR CONFRONTATION BETWEEN THE TWO AT LIMMIE BOYD'S HOUSE WHERE HE HAD TO STEP INBETWEEN; PAROLEE DENIED THREATENING LIMMIE, ADMITTED WAS OVER THERE TO VISIT GRANDMOTHER AND ASK FOR FUNDS BUT LEFT ON HIS OWN; PAROLEE EXPLANATION TODAY WAS THAT FATHER LYING AS HE HAS NEVER LIKED HIM HOWEVER EVIDENCE TODAY INDICATED CONSIDERABLE FINANCIAL SUPPORT HAD BEEN PROVIDED PRIOR TO CURRENT INCIDENT BY FATHER AND GRANDMOTHER AND A HELPFUL RELATIONSHIP.

Basis for Disposition:

1ST TERMER ON PAROLE FOR P12021
E SINCE 10-22-02 WITH ONE PRIOR 12I RTC LAST YEAR FOR ABSCONDING/RESISTING/POC/TRAVELING ; WAS LIVING WITH RELATIVE AND GOING TO SCHOOL UNTIL RECENTLY; PAROLEE PRESENTED LETTER FROM MR. BALDE OF MUSLIM CHURCH INDICATING PAROLEE HAD BEEN DOING VOLUNTEER TEACHING AT THEIR CHURCH; AGENT ALSO NOTED THAT PAROLEE DID REPORT IN FOR THE ARREST ON THE CURRENT CHARGE; BASED ON NATURE OF CHARGE NOTING ABOVE INFORMATION IN MITIGATION BUT A SERIOUS CHARGE WITH HX OF VIOLENCE INVOLVING RELATIVES, RTC FOR NINE MNS INELIGIBLE PLUS ADDED SPECIAL CONDITION OF NO CONTACT WITH VICTIM LIMMIE BOYD.

| NAME | CDC NUMBER | INST/REGION / AGENT | HEARING DATE |
|---------------|------------|----------------------------------|--------------|
| BOYD, MOBASSA | P05952 | OAKLAND 2 / 2 TUCKER, WILLIAM | 23-OCT-2007 |

SUMMARY OF REVOCATION HEARING AND DECISION

SUMMARY OF DISPOSITION

Parole Referral: REFER

Custody Status: In Custody as of 19-SEP-07

Continue on Parole Schedule for Revocation
 Dismiss Other Non-Rev Sanction

Parole Revoked-Return to Custody: 9 months

Serve Consecutively Concurrently

Parole Revoked-Return to Custody: months for Psych Rx

Time Served: to

Hold Order: Place Remove

3057 Credits

Eligible

Ineligible 3057d-1 Reason for Ineligibility:

Commitment Offense: P12021

Revocation Offense:

Parole Violation:

Sentenced under PC 1168:

Unsuitable for credits because of PC 3057(d)(2)(e)

Prior Criminal History

Circumstances & Gravity of Parole Violation

Specify Reason

Parolee Decision

Accept Reject Optionally Waive

Optional Waivers

Previous BPH Action of _____ is:

Rescinded Reaffirmed

Special Conditions of Parole

Noted Reaffirmed Amended

Other

Special Condition

ADD NO CONTACT WITH LIMME BOYD

Reason

VICTIM OF C/O

Instructions to CDCR or DAPO Staff

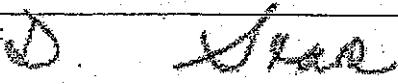
AGENT TO REVIEW WITH DAPO NEEDS FOR NO CONTACT WITH GRANDMOTHER BASED ON CIRCUMSTANCES OF C/O

Miscellaneous Actions

BPH HEARING PANEL

NAME

NAME



DECISION REVIEW BY:

REVOCATION HEARING TIME (MINUTES)

1. Prehearing Prep. Time: 18
2. Actual Hearing Time: 95
3. Report Completion Time: 20
4. Other:

Total: 133

Hearing Accommodations (ADA) Provided: Yes No

Accom:

NAME
BOYD, MOBASSA

CDC NUMBER
P05952

INST/REGION / AGENT
OAKLAND 2 / 2
TUCKER, WILLIAM

HEARING DATE
23-OCT-2007

BOARD OF PAROLE HEARINGS

SUMMARY OF REVOCATION HEARING AND DECISION

STATE OF CALIFORNIA

V. OBJECTIONS

 None Yes

| NAME | CDC NUMBER | INST/REGION / AGENT | HEARING DATE |
|---------------|------------|----------------------------------|--------------|
| BOYD, MOBASSA | P05952 | OAKLAND 2 / 2 TUCKER, WILLIAM | 23-OCT-2007 |

PL STATUS SUMMARY : TYPE- D : CSP-5

01/04/2000 22:44

| | | | |
|--------------------------|----------------------------|----------------------------|--------------------------------|
| OC NUMBER | NAME | ETHNIC | BIRTHDATE |
| P05952 | BOYD, MOBASSA, K | BLA | 08/28/1974 ✓ |
| TERM STARTS 1/03/1998 | MAX REL DATE 11/11/2003 | MIN REL DATE 10/22/2002 | MAX ADJ REL DT 11/11/2003 ✓ |
| | | | MIN ADJ REL DT 10/22/2002 ✓ |
| TERM 6/00 + ENHCMNTS | 0/00 = TOT TERM | 6/00 | PAROLE PERIOD 3 YRS |

-PRISON + POST SENTENCE CREDITS
 E P2900-5 P1203-3 P2900-1 CRC-CRED NH-CRED P4019 P2931 POST-SENT TOT

| | | | | |
|-----|-------|------|------|-----|
| 404 | 145 ✓ | 72 ✓ | 33 ✓ | 250 |
|-----|-------|------|------|-----|

| | | | | |
|----------------|----------|---------------|--------|---------|
| CV DT/ COUNTY/ | CASE | SENTENCE DATE | CREDIT | OFFENSE |
| NT | OFF-CODE | DESCRIPTION | CODE | DATE |

TROLLING PRINCIPAL & CONSECUTIVE (INCLUDES ENHANCEMENTS/OFFENSES):

CONTROLLING CASE -- ✓
 03/1998 V ALA 132404 ✓ 6/30/1998 ✓ NO STRIKES: 2 ✓
 P12021(E) ✓ POSS F/A W/PRIOR JUV CONV 3 02/05/1998

| | | | | |
|------|----------|------------|-------------|-------|
| DATE | END DATE | LOG NUMBER | RULE NUMBER | DAY S |
| | | | ASSESS | LOST |
| | | | REST | DEAD |

| | |
|---------------------|---------------------------|
| 08/03/1998 | *****BEG BAL***** |
| 05/01/1999 | 199050516 3005(C) 90 90 |
| 08/03/1998 | 132404 |
| 12/28/1999 | 199050516 3005(C) 90 ✓ |
| CURRENT PC BALANCE: | 0 CURRENT BC BALANCE: 385 |

REPORT TO: BOARD OF PRISON TERMS NARCOTIC ADDICT EVALUATION AUTHORITY

| | | | | | |
|--|---|---|--|--------------------------------------|--|
| DC NUMBER P05952 | NAME (LAST, FIRST, MI) Boyd, Mobassa | | NAME BOOKED AS Same | REGION/UNIT II/Oakland | CSTCU - ST YES <input type="checkbox"/> NO <input type="checkbox"/> |
| ARREST DATE 9-19-07 | ARRESTING AGENCY Oakland PD | BPT REFERRALS: <input checked="" type="checkbox"/> MANDATORY <input checked="" type="checkbox"/> NON-MANDATORY | BOOKING NUMBER AND/OR LOCATION AYB907/Santa Rita jail | | |
| ARREST CODE A | ARREST CODES: A P&CSD STAFF ALONE AB P&CSD ASSISTED BY LAW ENFORCEMENT AGENCY | | B LAW ENFORCEMENT AGENCY ALONE D LAW ENFORCEMENT AGENCY WITH INFORMATION FROM P&CSD | | |
| HOLD DATE 9-19-07 | DISCOVERY DATE 9-19-07 | HOLD REMOVED DATE Intact | AGENT OF RECORD W. Tucker | CONTROLLING DISCHARGE DATE 7-9-08 | DISCHARGE REVIEW DATE 3-10-08 |
| CHARGES AND CODES Cond 4: Elder Abuse (999) Cond 4: Threaten/Harass another (915) | | | CHARGES AND CODES 4. 5. 6. <i>PRIORITY RECEIVED</i> | | |
| REASON FOR RETAINING PAROLE HOLD: PAROLEE DANGER TO: <input type="checkbox"/> ABSCOND <input checked="" type="checkbox"/> SELF <input type="checkbox"/> PROPERTY-OTHERS <input checked="" type="checkbox"/> SAFETY-OTHERS | | | DATE COPY SENT TO PAROLEE | | INITIALS OF PERSON SENDING SEP 28 2007 |

Supporting Evidence

SANTA RITA DRU

Charge 1 and 2:

On 9-7-07, Subject's father Limmie Boyd came to parole office and provided AOR with a written statement regarding subject Mobassa Boyd.

Limmie stated that in August 2007, the subject's grandmother Lilla Downs gave the subject's landlord Phillip Larkin \$800.00 to distribute to subject on as need basis. The subject used up the monies before the end of the month and then borrowed \$344.00 from Landlord Phillip. The subject said he would pay Phillip back September 2007. The subject failed to pay Mr. Phillip back. The subject claimed that he did not receive his (SSI) check in September 2007, but later admitted that he had received his SSI check but he had already used up the cash. The subject went over to his grandmother's Lilla and attempted to manipulate her out of \$800.00 more but was unsuccessful.

Mr. Limmie stated that on 9-3-07, the subject stated that his elderly mother Lilla has been paying the subject's rent of \$550.00 monthly as well as given him \$200.00 a week for transportation to school. The subject's grandmother has a problem thinking things through. When the subject dropped out of school the subject's elderly grandmother Lilla reduced his weekly amount to \$140.00 the subject became angry and went into a rage. Limmie stated that it appeared that the subject wanted to fight. The subject grabbed a small table and threatened Limmie with it. Limmie picked up a hammer to use for self defense. No one was struck with the table or hammer. Limmie called the police and told the subject to get out of his house. The subject prior to leaving the residence threatened to kill Limmie.

On 9-17-07, AOR received copy of complaint letter that Limmie Boyd submitted to the Oakland Police department report [REDACTED]. Information is same as above.

On 9-19-07, The subject was arrested by DAPO in the parole office for Elder abuse and threaten another person. Subject was transported and booked at Glenn Dyer County jail.

Parolee Statement: Subject did not provide a statement.

Court Information: No court date.

Attachments: Oakland Police Report # [REDACTED]

Witnesses: Agent W. Tucker 4848,

Victims Limmie Boyd, Lilla Downs and Phillip Larkin

SUMMARY OF PAROLE ADJUSTMENT
CDC 1521-B (1.91)

ATTACH LEGAL STATUS SUMMARY

| | | |
|---------------------|---|------------------------------|
| ID NUMBER 205952 | NAME (LAST, FIRST, MI) Boyd, Mobassa | DATE OF REPORT 9-25-07-07 |
|---------------------|---|------------------------------|

| PRIOR COMMITMENT(S) | | CODE SECTION(S) | DATE(S) OF COMMITMENT |
|-------------------------------|--|---------------------------------|-------------------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| PECIAL CONDITION(S) OF PAROLE | | INITIAL PAROLE DATE 10-22-02 | LAST REV. REL DATE (RRD) 3-10-07 |

Participate in Parolee Outpatient Clinic

| RESIDENCE | | | |
|-----------------------------|---|-------------------------------|---------------|
| LAST KNOWN ADDRESS 94605 | LIVING WITH Self | RESIDENTIAL PATTERN Stable | |
| Oakland CA. | | | |
| MEANS OF SUPPORT | | | |
| SOURCE OF SUPPORT SSI | IF EMPLOYED, EMPLOYER'S NAME & BUSINESS ADDRESS Unemployed | DATES EMPLOYED FR. - TO: | POSITION HELD |

EVALUATION - Cover the period from date of last release to current report. Include positive and negative factors of this release and community programs available in lieu of revocation, e.g. drug programs, psychiatric in-patient or out-patient, etc.

SECOND STRIKER

Subject is a Multi termer with a commitment offense of Convicted person with a firearm. Subject has a criminal history that consist of

Convictions for: Convicted person in possession of a firearm and

Arrest for: Second Degree Murder, Threaten crime with intent to terrorize, Felon/Addict/Possess Firearm.

Subject's adjustment to parole has been moderate. Subject is a second striker with a long criminal history which consists of a violent past which is reflected by CII/Rap Sheet. Subject's criminal history makes him a threat to the community. A Board of Prison Hearings is warranted. If good cause is found a return to custody recommended.

32

STATE OF CALIFORNIA

RECOMMENDATION, REVIEW AND SIGNATURE SHEET
CDC 1521-D (1-91)

| BPT | RECOMMENDATION | NAEA |
|---|--|------|
| <input type="checkbox"/> Reinstate on Parole as of _____ | <input type="checkbox"/> Continue outpatient or civil addict parole status | |
| <input type="checkbox"/> Cancel Warrant - Remove Warrant from File | <input type="checkbox"/> Dismiss _____ | |
| <input type="checkbox"/> Extend Parole Period to Maximum Pending Parole | <input type="checkbox"/> Suspend - reinstate as of _____ | |
| <input type="checkbox"/> Continue on Parole | <input type="checkbox"/> Suspend - return _____ | |
| <input type="checkbox"/> Dismiss _____ | <input type="checkbox"/> Remove Release / Parolee at Large _____ | |
| <input type="checkbox"/> Remove Parole Hold | <input type="checkbox"/> Continue oral order of _____ | |
| <input checked="" type="checkbox"/> Retain Parole Hold | <input type="checkbox"/> Confirm oral order of _____ | |
| <input checked="" type="checkbox"/> Refer to Screening Calendar | <input type="checkbox"/> Vacate oral order of _____ | |
| <input type="checkbox"/> Schedule for Revocation Hearing | <input type="checkbox"/> Other _____ | |
| <input type="checkbox"/> Schedule for Revocation Hearing -- Psychiatric Treatment | | |
| <input type="checkbox"/> Schedule for Good Cause Hearing -- (Cooperative Parole) | | |
| <input type="checkbox"/> Maintain in Community Pending Revocation Proceedings | | |
| <input type="checkbox"/> Other _____ | | |

PAROLE AGENT'S SIGNATURE

W. Tucker

DATE

9-26-07

| BPT | UNIT SUPERVISOR'S DECISIONS | NAEA |
|---|--|------|
| <input type="checkbox"/> Reinstate on Parole as of _____ | <input type="checkbox"/> Continue outpatient or civil addict parole status | |
| <input type="checkbox"/> Cancel Warrant - Remove Warrant from File | <input type="checkbox"/> Dismiss _____ | |
| <input type="checkbox"/> Extend Parole Period to Maximum Pending Parole | <input type="checkbox"/> Suspend - reinstate as of _____ | |
| <input type="checkbox"/> Continue on Parole | <input type="checkbox"/> Suspend - return _____ | |
| <input type="checkbox"/> Dismiss _____ | <input type="checkbox"/> Remove Release / Parolee at Large _____ | |
| <input checked="" type="checkbox"/> Remove Parole Hold as of _____ | <input type="checkbox"/> Continue oral order of _____ | |
| <input checked="" type="checkbox"/> Retain Parole Hold | <input type="checkbox"/> Confirm oral order of _____ | |
| <input checked="" type="checkbox"/> Refer to Screening Calendar | <input type="checkbox"/> Vacate oral order of _____ | |
| <input type="checkbox"/> Schedule for Revocation Hearing | <input type="checkbox"/> Other _____ | |
| <input type="checkbox"/> Schedule for Revocation Hearing -- Psychiatric Treatment | | |
| <input type="checkbox"/> Schedule for Good Cause Hearing -- (Cooperative Parole) | | |
| <input type="checkbox"/> Maintain in Community Pending Revocation Proceedings | | |
| <input type="checkbox"/> Other _____ | | |
| <input type="checkbox"/> Note to Hearing Agent: History of major psychiatric disorder should be considered in attorney determination. | | |
| <input type="checkbox"/> Note to Classification Staff Representative: May be psychotic. Requires evaluation for category. | | |

CASE REVIEW

COMMENTS

Subject posed as threat risk to victim and warrants
BPA review of arrest charges.

| | | | |
|----------------------------|---------|-----------|-----------------|
| SUPERVISOR'S SIGNATURE | DATE | | |
| Jody Black | 9-27-07 | | |
| DATE PAROLEE COPY PROVIDED | MAILED | DELIVERED | BY: (SIGNATURE) |

PAROLEE'S NAME

CDC NUMBER

D05952

INSTRUCTIONS FOR COMPLETING - For minor violations, the Parole Agent is to complete the columns titled "DATE OF VIOLATION," "VIOLATION," and "ACTION." The Unit Supervisor will enter the "ACTION CODE" and sign in the column titled "ACTION TAKEN BY." For all Board of Prison Terms (BPT) actions, where good cause is found, the Parole Agent shall complete all columns including the "ACTION CODE" column. Entries are to be in chronological order and typed or legibly handwritten. The Original CDC 1244 is to be maintained on the top right-hand section of the field file. A copy of the CDC 1244 is to be attached to violation reports.

| CDC NUMBER | PAROLEE'S NAME (LAST, FIRST, MI) | UNIT |
|------------|----------------------------------|-----------|
| P05952 | BOYD, MOBASSA, K | OAKLAND 2 |

STATE OF CALIFORNIA
CHARGE REPORT
CDC 1502-B (08/05)

9/1/07
DEPARTMENT OF CORRECTIONS AND REHABILITATION
DISTRIBUTION
ORIGINAL - C-FILE
1ST COPY - FIELD FILE
2ND COPY - PAROLEE

REPORT TO: BOARD OF PAROLE HEARINGS

| | | | |
|--------------------------------------|---|---|--|
| CDC NUMBER P05952 | NAME (LAST, FIRST, MI) Boyd, Mobassa | NAME BOOKED AS Same | REGION/UNIT II/Oakland 2 |
| ARREST DATE 9-19-07 | ARRESTING AGENCY DAPo | BPH REFERRALS: <input checked="" type="checkbox"/> MANDATORY <input type="checkbox"/> NON-MANDATORY | BOOKING NUMBER AND/OR LOCATION AYB907/Glenn Dyer jail |
| ARREST CODE A | *ARREST CODES A DAPo STAFF ALONE AB DAPo ASSISTED BY LAW ENFORCEMENT AGENCY | | |
| HOLD DATE 9-19-07 | DISCOVERY DATE 9-19-07 | HOLD REMOVED DATE Intact | AGENT OF RECORD W. Tucker |
| CONTROLLING DISCHARGE DATE 7-9-08 | | DISCHARGE REVIEW DATE 3-10-08 | IMMINENT DISCHARGE <input type="checkbox"/> |

| | |
|--|-------------------------|
| CHARGES AND CODES Cond 4: Elder Abuse (999) | CHARGES AND CODES 4. |
| 1. Cond 4: Threaten (915) | 5. |
| 2. | 6. |
| 3. | |

| | | |
|---|-----------------|---------------------------------|
| REASON FOR RETAINING PAROLE HOLD: PAROLEE DANGER TO <input type="checkbox"/> ABSCOND <input checked="" type="checkbox"/> SELF <input type="checkbox"/> PROPERTY - OTHERS <input checked="" type="checkbox"/> SAFETY - OTHERS | DATE COPY GIVEN | NAME OF PERSON NOTICING PAROLEE |
|---|-----------------|---------------------------------|

On 9-19-07, Subject reported to the Oakland Parole office. Subject was arrested by DAPo for Threats and Elderly abuse. Subject was transported to Glenn Dyer jail.

RECEIVED

SEP 28 2007

SANTA RITA D.P.O.

PAROLE AGENT'S RECOMMENDATION:

Retain hold, Pending investigation of charges

| | |
|---------------------------------------|-----------------|
| PAROLE AGENT'S SIGNATURE W. Tucker | DATE 9-19-07 |
|---------------------------------------|-----------------|

| | | | | |
|--|---|---|---|--|
| UNIT SUPERVISOR'S ACTION <input checked="" type="checkbox"/> DECISION | <input type="checkbox"/> REVIEW | <input type="checkbox"/> RETAIN HOLD | <input type="checkbox"/> RELEASE HOLD AS OF (DATE): | <input type="checkbox"/> CANCEL WARRANTS - WANTS |
| <input type="checkbox"/> CONTINUE ON PAROLE | <input type="checkbox"/> CONTINUE IN OUT-PATIENT STATUS | <input type="checkbox"/> *DISCHARGE EFFECTIVE DATE: | <input type="checkbox"/> RETAIN ON PAROLE | |
| <input type="checkbox"/> REINSTATE ON PAROLE AS OF (DATE): | <input type="checkbox"/> TIME LOSS <input type="checkbox"/> NO TIME LOSS | <input type="checkbox"/> SUSPENDED/REINSTATE IN OPS AS OF (DATE): | <input type="checkbox"/> REFER TO BPH | <input type="checkbox"/> INVESTIGATE, SUBMIT APPROPRIATE REPORT BY (DATE): 9-27-07 |
| SPECIAL CONDITION(S): | <input type="checkbox"/> ADD | | | <input type="checkbox"/> DELETE |

UNIT SUPERVISOR'S COMMENTS/RECOMMENDATION:

I HAVE LOOKED AT THE INFORMATION. I BELIEVE THERE IS PROBABLE CAUSE TO MAINTAIN THE PAROLE HOLD

| | |
|---|-----------------|
| UNIT SUPERVISOR'S SIGNATURE Jody Black | DATE 9-19-07 |
|---|-----------------|

PAROLE ADMINISTRATOR'S COMMENTS/DECISION

| | | | |
|---------------------------------------|--|---------------------------------|------|
| <input type="checkbox"/> REFER TO BPH | <input type="checkbox"/> *DISCHARGE EFFECTIVE DATE | FIELD ADMINISTRATOR'S SIGNATURE | DATE |
|---------------------------------------|--|---------------------------------|------|

CITIZEN CRIME REPORT
Oakland Police Department
455 7th Street, Patrol Desk (1st Floor)
Oakland, Ca 94607 - 3956

For Departmental Use Only TF - 862-1 (2/08)

| | | | |
|---|----------------------------------|---------|--------|
| Assign To AST | Police Beat | CP Beat | RD No. |
| Crime (Section/Subsection Code) 415P-C. | Classification THREATS | | |

Is this Report for Insurance Purposes Only? Yes No

Please type or print in non-erasable black ink. When this form is completed, it will serve as an Oakland Police Crime Report which will document the incident and assist in its investigation.

If a written report has already been made, please check the SUPPLEMENTAL box on the Citizen Additional/Supplemental Information form. If you desire a Report Document Number, call (510) 238-3021 after five (5) business days.

| | | | | | |
|---|-------------------------------------|----------------------|---|---|---------------------------|
| LAST Name | First | Middle | Race | Sex | Date of Birth (Mo/Day/Yr) |
| REDACTED COPY | | | | | |
| Residence | City | Oakland | Zip | Res. Phone | |
| Business | City | Oakland | Zip | Bus. Phone | |
| Do you know who is responsible? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | If yes, Name mobassa-Boyd | | Address/School | City/State Oakland. | |
| Race | Sex | Age | Physical Description (Height, Weight, Hair Color, Scars, Tattoos, etc.) Black/Male 33. about 75; 1-0 more (7) 185 | | |
| Date of Incident | Day | Time | AM | Address or Location Where Incident Occurred | |
| Sep. 3. 2007 | yes | about 2:00 pm | | | |
| Vehicle Involved | Yr. | Make | Model | Color | License No. |
| <input type="checkbox"/> Suspect's | | | | | |
| <input type="checkbox"/> Victim's | | | | | |
| Method of Entry <input type="checkbox"/> Forced <input type="checkbox"/> Attempt <input type="checkbox"/> No Force | | | | | |
| Point of Entry <input type="checkbox"/> Door <input type="checkbox"/> Roof <input type="checkbox"/> Window | | | | | |
| Brief Summary of Incident Suspect made threat on my life | | | | | |

Describe What Was: Stolen Damaged Lost

| Article | How Many | Model and Number | Serial Number * | Color | Value |
|---------|----------|------------------|-----------------|-------|-------|
| 1. | | | | | |
| 2. | X | X | X | | |
| 3. | | | | | |
| 4. | | | | | |

*NOTE: It is VERY important to give the serial number of each item listed above.

IT IS A MISDEMEANOR TO MAKE A FALSE REPORT OF A CRIME (See, 148.5 Calif. Penal Code)

Signature

Date (Month/Day/Year)

7-7-07

For Departmental Use Only

| | | | |
|----------------------|------------------|---------------------|------------|
| Loss | Reporting Person | Investigator's Name | Serial No. |
| Approving Supervisor | Clearance | | Date Filed |

Sept 3, 2007

Mofassa Boyd came over to my home where my older mother and I live. My mother had been helping him each month with a little money to help him to make it over the month. She had been paying his rent \$550.00 a month and when he was in school to help with bus fare \$200.00 a week. He dropped out of school so we charged to \$140. week he was angry about this. the month after we philly and I gave him \$800.00 for the month. He spent it before the month was out and borrowed \$44.00 to be paid back in Sept. He said he did not get the check. But later said he do cash it spend money. Came over to the house for \$800.00 from my mother trying to manipulate my old mother who can't think things out. She has ask me and me philly don't to help with his needs. this we have been trying to do. So I ask him not to do this (manipulating my mother) and that he was taking to much money from her, and she was spending

More Money on him than she get a mont^t and she was runing out of money - he became angry and went into a rage I thought she was going to jump on me so picked up a hammer to defend myself and got out of the home he yell up small talk my mother use by her chair. Then I thought that I should call the police and not get myself into trouble doing something to him - so I picked up the phone to call police, he then went out of the home saying he was going to kill me - so I thought that I should report this.

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~~EXHIBIT C~~

BOARD OF PRISON TERMS

NOTICE OF PAROLE REVOCATION RIGHTS AND ACKNOWLEDGEMENT

BPT 1100

STATE OF CALIFORNIA

(Follows the ADA advisement and completion of the BPT 1073.)

If the charges are referred to the Board of Prison Terms this is what will happen:

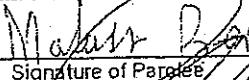
- You have a right to written notice of claimed violations of parole (CDC Form 1502b).
- You have a right to all evidence that will be used against you.
- You have a right to an attorney who will be assigned to represent you at all times during the revocation process.
- You have the right to ask your attorney to request an expedited (earlier) probable cause hearing if you have evidence that is a complete defense to the charges that are the basis of the parole hold.
- Effective July 1, 2005, you have the right to a probable cause hearing with your attorney and a Deputy Commissioner of the Board of Prison Terms within 10 business days of today if you are in custody. You have the right to present letters, documents, and speak on your own behalf at this hearing. The reason for the probable cause hearing is for the Deputy Commissioner to determine if there is enough evidence to keep you in custody until your revocation hearing and to try to settle your case on that date. At the probable cause hearing you will also be given the opportunity to discuss and accept or reject the offer given to you by the Deputy Commissioner.
- If you are in custody, you have the right to a revocation hearing within 35 calendar days from the date the parole hold was placed and to receive written notice of the date and time of the hearing.
- You have a right to be heard in person and to present witnesses and documentary evidence in your defense at a revocation hearing.
- You have a right to confront and cross examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation).
- You have a right to a neutral and detached hearing officer.
- You have a right to have your revocation hearing within 50 miles of the alleged violation.
- You have the right to subpoena witnesses in your defense to the same extent that the state can subpoena witnesses.
- You have a right to a written statement by the hearing officer as to the evidence relied on and the reasons for the decision and to receive a tape recording of the revocation hearing.

Acknowledgement

1. I have been informed of my rights listed above.
2. I know that I will meet with an attorney. My attorney will tell me all my rights and the BPT return-to-custody assessment offer.
3. I have a copy of the papers and reports checked below.

BPT Form 1073, Notification of Americans with Disabilities Act completed today
 CDC Form 1502(b), Charge Report
 BPT Form 1100, Notice of Rights and Acknowledgement
 Blank Form BPT 1100(b), Request for Witnesses
 Other: _____

I have read (or had read to me) the information above. I have been given copies of the papers, forms, and reports listed above


Signature of Parolee

CDC Number

E Hampton

Date

9/21/07

Signature of Staff Completing the Actual Notice

Print First Initial, Last Name

Date

NAME Bayd M.

CDC #

POS952

INST/REGION

1100140

BOARD OF PRISON TERMS

NOTICE AND REQUEST FOR ASSISTANCE AT PAROLE PROCEEDING

BPT 1073

PRE-INTERVIEW FILE REVIEW (STAFF ONLY)

Acknowledge that I have reviewed all relevant and reasonably available central file and/or field file information prior to first contact with the inmate/parolee involved in this parole proceeding. For revocation proceedings, this file review must include, at the minimum, a review of the CDC Form 611 (revised 05/01) or a Parolee Disability Review Sheet (PDRS) and attached documents, if any.

Print Name: / / Sign Name: / /

Date: 9/20/07

Identified Disabilities

Mental Health Concerns (Circle One) CCCMS EOP MHCB DMH 128C dated: 4-16-07

Developmental Disability (Circle One) DD1 D1A DD2 DD3 128C-2 dated: _____

Physical Disability (Circle all that apply) (verified on CDC Form 1845) Dated: _____

Mobility (DPW / DPO / DPM / DNM) Vision: (DPV/DNV) Hearing: (DPH / DNH) Speech: (DPS / DNS)

Other Disability (that may limit access): _____ documented on _____ dated: _____

Learning Disability documented on _____ dated: _____

NO DISABILITIES IDENTIFIED FROM THE FILE REVIEW.

Other Potential Assistance Needs:

Reading Level 7M Total GPL NA (If not available, note "N/A")

Non-English Speaking (List language(s) inmate/parolee speaks): _____

III. INMATE/PAROLEE RIGHTS & SELF-IDENTIFICATION

You have a right to receive help for your hearing. If you need help talking, reading, hearing, seeing, understanding or getting to your hearing, you have a right to that help. You have a right to receive help in meeting with your attorney. If you do not speak English, you have a right to an interpreter. If you are deaf and use sign language, you have a right to a sign language interpreter. If you cannot read, the BPT or CDC must provide you with help to read the forms and papers. If you need special transportation, the BPT or CDC must provide it for you.

Check all that apply:

I need help reading my documents.
 I need help understanding the procedures and forms.
 I need a sign language interpreter.
 I need a wheelchair and I do have one. do not have one.
 I do not speak English and need an interpreter in _____ (language)
 Other _____

I need the following help to hear _____
 I need the following help to see _____
 I need to communicate in writing.

I do not need any help for my parole hearing.

X Hammon _____

Inmate/Parolee Signature

CDC #

Date Signed

III. INITIAL SERVICE OF RIGHTS (STAFF ONLY)

I have informed inmate/parolee of his/her rights and charges, if any, and have determined that he/she:

Appears to understand

Appears to have difficulty understanding

Effective Communication Method Used: (Foreign language interpreter, sign language interpreter, read/spoke slowly, assistive device, etc.)

Additional Comments: 145 (C-24D)

LE Hammon
Staff Name and Title (please print)

Staff Signature

Date

IV. BPT REVIEW FOR INTERNAL USE ONLY (Non-Lifer Cases)

Accommodation(s)/Assistance to be provided at hearing(s): LSD

SEP 28 2007

Staff Name and Title (please print)

Staff Signature

Date

BC4D, McBASSA
NAME _____

CDC #

TYPE OF HEARING

DATE OF HEARING

LOCATION

ANB907 TUCKER

Number P05952 Last Boyd First Mobassa Room N-331L Date 4/16/01 CMF

THIS INMATE HAS COMPLETED A MENTAL HEALTH EVALUATION WITH THE FOLLOWING RESULTS (check box(s.) below:

a) Does Not Meet Criteria for Inclusion in the Mental Health Services Delivery System (MHSDS)

b) Meets Inclusion Criteria for the MHSDS. Check Level of Care [LOC] Below.

c) Inclusion is for Medical Necessity (Obtain Chief Psychiatrist Signature Below; Check LOC).

d) Currently included in the MHSDS. Check new or continuing LOC below.

C: Clinical Case Management (CCCMS) Enhanced Outpatient Program (EOP) Crisis Beds (MHCB) Inpatient DMH

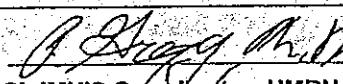
Calculated GAF **43** Psychotropic Medication Prescribed Yes No

Current Behavior Alerts

 Suicide Aggressive Self Injury Unpredict Other

Behavior Comments:

 Physician **Gregg**

 Signature 

 Chief Psychiatrist

CDC Psychiatric 128C

 Distribution: Central File, Unit Health Record, CCI, IMHIS Coordinator, UMRN

REVOCATION PACKET CONTENT CHECKLIST

ORIGINAL BPH
YELLOW BPH COPY
PINK PAROLE UNIT

| | Column 1 (Field Unit) | Column 2 (BPH) |
|--|--------------------------|-------------------|
| Parole Violation Report and Attachments: | | |
| One (1) original and one (1) copy of the original | | |
| If applicable, one (1) Olsonized copy of the original | | |
| CDC 1676, Charge Sheet/Revocation Tracking/Scheduling | ✓ | |
| CDC 1521(b), Summary of Parole Adjustment | ✓ | |
| CDC 1244, Parole Violations Disposition | ✓ | |
| CDC 188, Legal Status Summary | ✓ | |
| CDCR 1521(d), Recommendation, Review, and Signature Sheet | ✓ | |
| CDCR 1654, Parole Revocation Hearing Notice and Witness Determination of the scheduled hearing | ✓ | |
| Supporting/Evidentiary Documents: | | |
| One (1) original and one (1) copy of the original | | |
| If applicable, one (1) Olsonized copy of the original | ✓ | |
| Police Report(s) | ✓ | |
| Lab Results | | |
| Other Reports: | | |
| Notice of Charges/PCH Documents: | | |
| One (1) copy | | |
| CDCR 1502(b), Charge Report | ✓ | |
| BPH 1100 Notice of Right to Revocation Hearing - Acknowledgement | ✓ | |
| BPH 1073, Notice of Request for Assistance at Parole Proceedings | ✓ | |
| ADA Source Documents (if applicable): | | |
| CDC 128 B, General Chrono, LDL Verification/TABE | | |
| CDC 128 C, Chrono-Medical, Psych, Dental | ✓ | |
| CDC 128 C-1, Reception Center Medical Clearance | | |
| CDC 128 C-2, Chrono-Recommendation for Adaptive Support | | |
| CDC 1845, Inmate/Parole Disability Verification | | |
| Other: | | |

Complete the column by placing a check mark for the documents that are present and completed in the revocation packet. If a document is not applicable for this revocation packet i.e., lab results, mark N/A in the column.

Column 1 - Inventoried by DAPO Staff:

| Field Unit Forwarding Revocation Packet | Name/Title (Printed) | Date |
|---|----------------------|---------|
| Oakland Unit | B. Richie-PT | 9-27-07 |

Column 2 - Inventoried by BPH Staff:

| DRU Site Completing Revocation Packet Review | Name/Title (Printed) | Date |
|--|---|-------------------------|
| | Aubrey Marks B.P.H. SANTA RITA D.R.U. (925) 551-6927 | RECEIVED SEP 28 2007 |

CDC Number: P05952

CDC Name (Printed): Boyd, mobassas

243

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

PAROLEE – ATTORNEY DECISION FORM

BPT 1104(b)

ASSESSMENT OFFER OF: _____ months INELIGIBLE ELIGIBLE (circle one)

NOTICE ACKNOWLEDGEMENT: I have gotten and understand (or had explained to me) all necessary documents except the following (indicate form name and description or indicate "N/A" if you got everything): _____

Select one of the five following options:

1. **ACCEPT:** I accept the return to custody order (assessment offer) and unconditionally give up my rights to contest the charges against me or have a probable cause or full revocation hearing. I also agree to any and all special conditions of parole imposed on me by the Board of Prison Terms.

2. **OPTIONAL WAIVER:** I accept the assessment offer and optionally give up my right to a hearing (probable cause and full revocation) at this time because local charges have been filed. I may choose to have a hearing later (within 15 days of the end of local proceedings).

3. I request a **PROBABLE CAUSE HEARING**. I understand that the assessment offer will remain open until the conclusion of the Probable Cause Hearing.

4. I request an **EXPEDITED PROBABLE CAUSE HEARING**. (Please describe reason for this request on separate sheet. Note, an offer of proof is required to show there is a complete defense to the charges that are the basis of the parole hold).

5. **REJECT:** I reject the screening offer, give up my right to a probable cause hearing, and request a full revocation hearing.

I intend to admit to the charges circled below. (Circle the appropriate charge numbers only; those not circled are presumed to be a plea of either deny or no plea):

• Charges I Admit: 1 2 3 4 5 6 7 8

I need the following ADA and/or foreign language accommodation for my hearing: _____

WAIVERS: I give up my right to the following: (Select all boxes that apply)

I give up my right to call any witnesses at my full revocation hearing.

I give up my right to call my parole agent to attend my full revocation hearing.

I need _____ more days to prepare. I give up my right to have a timely (probable cause/full revocation) hearing. (Circle one or both).

| | | |
|--|--|------|
| Signature of Inmate/Parolee | <input type="checkbox"/> Inmate/Parolee refused to sign/appear (circle one or both). Witness: | Date |
| Printed Name and Signature of Attorney | Telephone Number | Date |

NAME

CDC NUMBER

INST/REGION

ISLAMIC CENTER OF ALAMEDA

901 Santa Clara Ave
ALAMEDA, CA 94501
(510) 748-9033

October 22, 2007

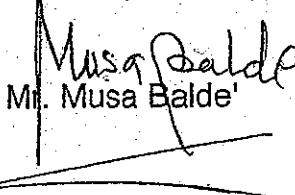
To Whom It May Concern:

Re: Support for Mobasa Boyd

I Mr. Musa Balde as the Imam of the Islamic Center of Alameda. I have known brother Mobasa Boyd for seven years now. He has been an exemplary man in our community. Everyone loves and respects him for his kind and gentle manners. He has been volunteering as a teacher in our school for several years now. All of our students have learned so much from him. He is indeed a role model not only to the Muslim Community but also the community at large.

If you have any questions, please do not hesitate to call me at the above number.

Sincerely,


Musa Balde
Mr. Musa Balde

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EXH 8580

43

RECEIVED
ISLAMIC CENTER OF ALAMEDA

901 Santa Clara Ave

ALAMEDA, CA 94501

(510) 748-9033

18 JUN 18 PM 1:58
RECEIVED
U.S. DISTRICT COURT
CLERK'S OFFICE
WILMINGTTON, CALIFORNIA

E-filing

October 22, 2007

EV 08 3005
RMW (PR)

To Whom It May Concern:

Re: Support for Mobasa Boyd

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Sincerely,

Musa Balde
Mr. Musa Balde

Mr. Mobassa Boyd
2545 75TH AVE
Oakland, CA 94605

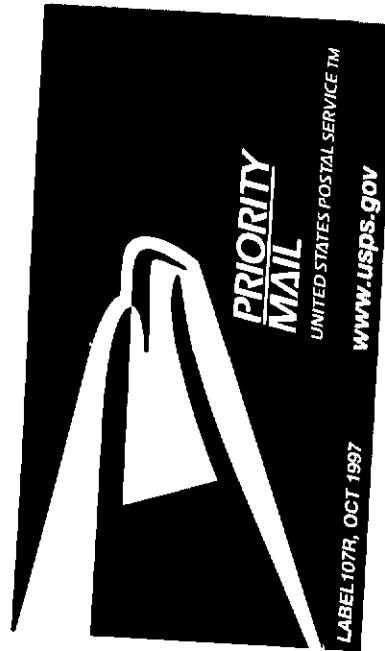


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54112



U.S. District Court
Northern District of California
450 Golden Gate Ave
San Francisco, California 94102